

KATHRYN E. SPRING

IBLA 84-346

Decided July 5, 1984

Appeal from decision of District Manager, Butte District, Montana, Bureau of Land Management, confirming the taking of wild free-roaming horses assigned under cooperative agreement.

Affirmed.

1. Evidence: Sufficiency -- Wild Free-Roaming Horses and Burros Act

BLM may properly take immediate possession of wild free-roaming horses, in accordance with 43 CFR 4740.4-3(e), where there is sufficient evidence in terms of the physical condition of the animals and the credible reports of third parties that the animals are being inhumanely treated, i.e., that they lack necessary food and shelter, have failed to receive medical treatment, and are subject to substandard animal husbandry practices.

APPEARANCES: Kevin E. Vainio, Esq., Belgrade, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Kathryn E. Spring has appealed from a decision of the District Manager, Butte District, Montana, Bureau of Land Management (BLM), dated July 28, 1983, confirming the taking of two wild free-roaming horses assigned under a cooperative agreement with BLM.

On September 18, 1982, appellant entered into a cooperative agreement with BLM whereby BLM assigned two wild horses (Freeze Mark Nos. 76320529 and 82320521) to appellant for private maintenance, pursuant to the Act of December 15, 1971, as amended, 16 U.S.C. §§ 1331-1340 (1982). The agreement defined "[m]aintenance" as "proper care and protection of the animal(s) under humane conditions for their lifetime or so long as this agreement shall remain in force."

In its July 1983 decision, BLM stated that appellant had "failed to provide proper care and humane treatment" for the two wild horses assigned to

her, i.e., a 7-year old grey mare and brown yearling filly. BLM further stated:

An inspection of the animals by qualified BLM employees and evaluations by two veterinarians indicate that the animals had been inadequately fed, required medical attention (parasites and worming) and were being confined in an area and in a manner (mare had been tied for many days, filly was tied up when inspected) inadequate for their needs. It was determined that it was necessary for the protection and well-being of the above animals that the Bureau of Land Management take immediate possession of them. This was accomplished on July 21, 1983.

In addition, BLM notified appellant that she might voluntarily terminate her cooperative agreement by signing an enclosed statement to that effect.

In her statement of reasons for appeal, appellant contends that the two wild horses were being properly cared for and humanely treated at the time BLM took possession of the animals:

1. The horses were fed two bales of hay per day in addition to regular feeding of oats and Shoquene and regular watering. The mare had stopped eating at one point, but had resumed eating and was gaining weight when the horses were taken. * * *

2. Two veterinarians had been contacted regarding medical care, including worming, for the horses. These veterinarians advised that the medical care should only be undertaken when the horses were broken. At the time the horses were taken, the horses were in the process of being broken. Additionally, the horses were regularly fed Shoquene to supplement their diets.

3. The horses were in the process of being broken and part of the commonly accepted method of breaking horses is to tie the animals and then lead them to gain their trust. The horses were otherwise exercised more than adequately and had more than enough space for their needs.

[1] Section 3(c) of the Act of December 15, 1971, as amended, 16 U.S.C. § 1333(c) (1982), provides authority for the Secretary to assign wild free-roaming horses to an individual for private maintenance for a period of 1 year and then to transfer title to that individual where it is determined that "such individual has provided humane conditions, treatment and care for such animal or animals" for that period of time. In implementing the statutory provision, BLM promulgated regulations which provide that wild free-roaming horses are assigned pursuant to a cooperative agreement which includes "provisions for proper maintenance of the animals and protection from inhumane treatment and commercial exploitation." 43 CFR 4740.4-3(d)(2). Moreover, 43 CFR 4740.4-3(e) provides that: "If the authorized officer determines that an adopted wild free-roaming horse or burro is being commercially exploited, inhumanely treated, or treated in a manner that violates a provision of the cooperative agreement, he may take immediate possession of the animal." (Emphasis added.) The question presented by this appeal is whether

appellant's two wild horses were being "inhumanely treated" such that BLM was entitled to take immediate possession of the animals pursuant to 43 CFR 4740.4-3(e).

The record contains a copy of an investigation report, dated July 21, 1983, prepared by Diane Lane, Executive Director, Humane Society of Gallatin Valley, who originally investigated a report of inhumane treatment of appellant's two wild horses and initiated the BLM investigation. The report indicates that Ms. Lane, accompanied by Deputy Jim Cashell of the Gallatin County Sheriff's Department and Rudolph Sedges, who is "related by marriage to the Springs," inspected the horses and the area where they were being kept on the afternoon of July 21, 1983. The report describes the condition and circumstances of the grey mare and brown filly as follows:

2) Grey mare, tied to post in center of corral, appx. 4 feet of rope from post to halter. Extremely rough, dull coat. Very thin, appx. 175-250 pounds below good condition. Hooves growing out, in need of trim. Eyes dull. Cut on foreleg. 2 white buckets strung up to post, no feed or water. Horse in full sun, appeared weak. No fresh hay within reach. Sedges told us the cut resulted from mare attempting to jump fence a while ago; that mare had been tied to post for 3 months.

3) Yearling colt tied to right side of corral. No water bucket. No feed.

4) Hay bales (good grass hay) stacked outside corral to left.

5) Small white bathtub water trough inside front corner of corral, out of horses reach, full of water.

The facts were essentially confirmed by a supplementary investigation report, also included in the record and presumably prepared by Deputy Cashell. Moreover, on July 22, 1983, the horses were inspected by Jerome W. Jack and Lynne Taylor, BLM employees, Ms. Lane, and Deputy Sharon Hovey. In a memorandum dated July 26, 1983, Mr. Jack reported:

Upon entering the facilities, we sighted three horses tied up in a small panel enclosure; a two year old sorrel stud, a gray mare, and a yearling chestnut filly. The mare was tied to a snubbing post in the center, and the other two to the panels. No shade or windbreaks were adjacent the enclosure * * *.

Buckets were tied in front of each horse, presumably for feed and water though each bucket was empty. I did notice a water tub containing water near the entrance of the enclosure, but this was out of reach of the horses.

The mare was very gaunt and obviously full of worms and other parasites, judging from her coat. The filly colt appeared to be in better shape, but the coat was not slick. The sorrel stud appeared in good shape though a little on the thin side.

The two wild horses were examined on July 21, 1983, by Gordon Hardaway, a veterinarian, who confirmed in a letter dated July 21, 1983, that both animals were underweight and had "rough" hair, indicating a combination of inadequate nutrition and parasitic infection. The horses were also examined on July 23, 1983, by Joel N. Udem, a veterinarian, who stated in a July 26, 1983, letter that:

The grey mare is in extremely thin condition with a poor rough hair coat, all bony protuberances (ribs, hip bones, backbones, shoulders) visually apparent indicating prolonged malnutrition. The mare's feet were severely overgrown, which, with her weakened condition produced frequent stumbling. A visual exam of her feces revealed a number of roundworms present, indicating a large parasite load, as does her overall condition. No other chronic or acute disease conditions noted, to account for the severe weight loss. The dark brown filly is also thin, and probably parasitized, but not as severe as the grey mare. On July 24, 1983, both horses were wormed by injection * * *. [Emphasis added.]

Departmental regulation 43 CFR 4700.0-5(o) defines "inhumane treatment" as

causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water or shelter; using any equipment, apparatus, or technique during transportation, domestication or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

In its July 1983 decision, BLM concluded that the two wild horses had been "inadequately fed." Appellant disputes this, contending that the animals received two bales of hay per day and a regular feeding of oats and Shoquene, a dietary supplement. Appellant also states that the grey mare had stopped eating and had only resumed eating when BLM took the horse. The physical condition of the two horses, however, at the time they were taken by BLM indicates that they had lacked "necessary food" over a prolonged period of time, especially in the case of the grey mare. We are not persuaded that the extremely thin condition of the grey mare, such that she was 175 to 250 pounds underweight and exhibited a rough hair coat, was due merely to a temporary cessation of her eating. Indeed, we are persuaded by the statement by Mr. Udem that her overall condition was the result of "prolonged malnutrition." Appellant has simply failed to prove that the severe condition of the grey mare was the result of not eating and not inadequate nutrition. The brown filly, while not as thin as the mare, also exhibited a rough haircoat, which indicates inadequate nutrition over a period of time. Moreover, we believe it is indicative of appellant's neglect that, given the condition of the grey mare, there is no showing by appellant that the horse was on a special diet. Appellant, indeed, has provided no evidence to indicate that she was taking steps to remedy the clearly malnourished condition of the horses or that such condition was due to circumstances beyond her control, especially where the horses had been in her custody for over 10 months. We also note that there is evidence that the horses lacked necessary shelter.

In its July 1983 decision, BLM also concluded that the two wild horses had not been treated for parasites or worms. Appellant contends that it relied on the advice of two veterinarians that the animals not be treated until they were "broken." However, appellant tendered no proof which would substantiate this contention. In light of the concern expressed by the two veterinarians who subsequently examined these horses, we can discern no reason why they should not have been treated for worms or parasites. Indeed, the fact that the animals were transported on July 22, 1983, and that blood samples were taken and the animals were wormed on July 24, 1983, indicates that medical treatment was possible.

Finally, in its July 1983 decision, BLM concluded that the two wild horses were confined in an area and in a manner "inadequate to their needs." We are unclear as to whether BLM is suggesting that this practice was not compatible with standard animal husbandry practices, within the meaning of 43 CFR 4700.0-5(o). Appellant contends that tying horses is an accepted method of breaking them. The record, however, indicates that the grey mare may have been tied to a post for 3 months and, during a week in July 1983, the horses had been checked on a daily basis by a third party who concluded that they had not been moved during that time. We conclude that BLM does not believe this to be standard practice, regardless of whether appellant was attempting to break the horses, and appellant has provided no evidence to the contrary. Moreover, the record supports a conclusion that the animals were subjected to undue physical stress by this action.

We conclude that the record amply supports a determination that the two wild horses assigned to appellant were being inhumanely treated and that BLM properly took immediate possession of the horses pursuant to 43 CFR 4740.4-3(e). See Dennis Turnipseed, 66 IBLA 63 (1982). We do not mean to suggest that appellant was being deliberately cruel to the horses; nevertheless, inhumane treatment may be just as much the result of ignorance as design.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge.

